Petition

81-1694

No. .....

Office - Supreme Court, U.S.
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ALEXANDER L. STEVAS
CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1981

HENRY L. GRIFFITH,

Petitioner,

vs.

EVELYN R. CLAWSON,
F/K/A EVELYN R. GRIFFITH,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS, TWELFTH APPELLATE DISTRICT, CLERMONT COUNTY, OHIO

WALTER KENNETH ZUK

1085½ Ohio Pike
Suite Four
Cincinnati, Ohio 45245
(513) 752-1300

Attorney for Petitioner

COURT INDEX PRESS, INC. — 215 E. Ninth Street, Cincinnati, Ohio 45202 — (513) 241-1450

QUESTIONS PRESENTED

The constitutional questions to be presented by this Writ of Certiorari were presented to the Clermont County Court of Common Pleas at trial, were renewed and preserved at each appropriate stage of the proceeding and during appellate review, and that question is as follows:

> Whether an order by a State Court compelling a father to pay support for a statutorily emancipated child while prohibiting him from exercising all other rights normally associated with parenthood, is repugnant to the Fourteenth Amendment to the United States Constitution.

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No. .....

HENRY L. GRIFFITH,

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Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS, TWELFTH APPELLATE DISTRICT, CLERMONT COUNTY, OHIO

Petitioner prays that a Writ of Certiorari issue to review the judgment of the Court of Appeals, Twelfth Appellate District, Clermont County, Ohio, entered in this cause on October 14, 1981, as the same is permitted to stand by the orders of the Supreme Court of Ohio under date of January 13, 1982, overruling Petitioner's motion to certify the record and sua sponte dismissing Petitioner's appeal as of right, thereby affirming the decision of the Clermont County Court of Common Pleas, Civil Division, imposing upon Petitioner an obligation to pay support for children who were emancipated by law, which is repugnant to the Fourteenth Amendment of the Constitution of the United States.

OPINION BELOW

The orders of the Supreme Court of Ohio overruling Petitioner's motion to certify the record and dismissing Petitioner's appeal as of right are unreported and printed herein as Appendix A and B respectively. The opinion of the Court of Appeals, Twelfth Appellate District, Clermont County, Ohio, unreported, is printed herein as Appendix C.

JURISDICTION

The judgment of the Clermont County Court of Common Pleas, Civil Division, was entered against Petitioner on February 18, 1980. The Court of Appeals, Twelfth Appellate District of Ohio, Clermont County, affirmed the decision on October 14, 1981. The Supreme Court of Ohio refused to hear Petitioner's appeal and dismissed the motion to certify and the appeal as of right on January 13, 1982. The order is contrary to the equal protection guarantees of the Fourteenth Amendment to the United States Constitution. The jurisdiction of this Court is envoked under 28 U.S.C. § 2101, and part V of the Rules of this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent provisions of the Fourteenth Amendment of the Constitution of the United States and the Constitution of the State of Ohio, §§ 1.58, 3103.03 and 3109.01, Revised Code of Ohio, are set forth in Appendix F herein.

STATEMENT OF THE CASE

This writ arises out of a post divorce decree proceeding wherein Evelyn R. Clawson f/k/a Evelyn R. Griffith filed a motion for increased support for two children of the marriage, it being undisputed that five (5) prior children of the marriage had been previously emancipated. One of the two remaining children that Respondent's motion concerned itself with was Tina Griffith who attained the age of eighteen on December 8, 1979. Appellant defended the motion in three areas — only one of which is the subject of this writ, namely that he contended he no longer was required to pay support for Tina Griffith pursuant to Section 3109.01 of the Revised Code of Ohio which was effective September 1, 1974. Petitioner's contention was that prior court decisions requiring only prospective application of Section 3109.01 of the Revised Code of Ohio were incorrect and that the order violates the equal protection clauses of the Ohio and United States Constitutions.

Both the Common Pleas Court of Clermont County and the Twelfth District Court of Appeals felt bound by a prior decision of the Ohio Supreme Court which dealt only with the issue of retroactivity. There was no prior decision of the Supreme Court of Ohio concerning the equal protection contention being presented by Petitioner herein and the Ohio Supreme Court refused review on that issue.

The effect of the order mandated by the Courts in Ohio is that the Petitioner and others similarly situated have been placed in a class of non-custodial parents of minor children who happened to be divorced before September 1, 1974. That particular class of parents now have a court ordered obligation to support those minor children and, in fact, that court ordered obligation goes so far as to order the payment of support to the custodial parent who,

under Ohio law, no longer has custody and who, under Ohio law, no longer has an obligation to support the children in question.

Further, the class of parents similarly situated with Petitioner has no enforceable rights of visitation with the children in question, as they are emancipated as provided by law.

The order of the Common Pleas Court of Clermont County, State of Ohio, as affirmed by the other state courts is contrary to the equal protection guarantees of the Constitution of the State of Ohio and the Fourteenth Amendment to the Constitution of the United States.

REASONS FOR GRANTING WRIT

This case involves substantial constitutional issues concerning the state's power to classify certain non-custodial parents and impose upon them certain property obligations without granting those persons all other rights normally associated with parenthood. The constitutional question addressed to this Court is whether or not such actions violate the equal protection guarantees of the Fourteenth Amendment to the Constitution of the United Sates and it is submitted that after a careful review of all facts and circumstances, that fact becomes painfully obvious.

I.

WHETHER AN ORDER BY A STATE COURT COMPELLING A FATHER TO PAY SUPPORT FOR A STATUTORILY EMANCIPATED CHILD WHILE PROHIBITING HIM FROM EXERCISING ALL OTHER RIGHTS NORMALLY ASSOCIATED WITH PARENTHOOD, IS REPUGNANT TO THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The issue that the continued order for support is unconstitutional was presented to the state trial and appellate courts. That question addressed to this court involves the application of this court's independent constitutional judgment applied to this issue under a claim of violation of the equal protection guarantees of the Fourteenth Amendment to the Constitution of the United States.

Petitioner and Respondent were divorced in Clermont County, Ohio on May 29, 1973. Tina Griffith, one of the minor children of the parties, attained the age of eighteen on September 8, 1979.

The applicable Ohio statute, Section 3109.01, of the Ohio Revised Code, provided that all persons eighteen years of age or more who are under no legal disability are capable of contracting and are of full age for all purposes.

The appropriate language in the Decree of Divorce provided "said support payments are to be made until such time as the minor children are twenty-one years of age or otherwise emancipated as provided by law".

Petitioner relied upon a lower court decision of *Istnick* v. *Istnick,* 66 OO 2d 244 (1973) which ordered "where the language of the court fixed support until majority or other similar language after January 1, 1974, said support

order no matter when made will terminate as to any child who has attained the age of eighteen". The Trial Court of Clermont County Ohio and the Court of Appeals for the Twelfth Appellate District, in reviewing Petitioner's appeal, relied upon a decision of the Ohio Supreme Court, *Nokes* v. *Nokes,* 47 OS 1 (1976), which states that the Revised Code Section 1.58 of the State of Ohio requires the amendment to Revised Code Section 3109.01 of the Revised Code of Ohio lowering the age of majority from twenty-one to eighteen not be applied so as to effect the rights of parties to a divorce decree and child support order entered prior to its effective date.

The Ohio Courts have ruled on a retroactivity issue and have refused to consider the matter under the equal protection issue. Petitioner in this case is required to pay support for a child who is more than eighteen years of age. He is required to pay that support to a non-custodial parent whose obligation to support the child is terminated by law by the operation of Revised Code Section 3103.03 of Ohio. The State of Ohio denies the Petitioner any visitation rights normally granted to a non-custodial parent because the child in question is an adult for all purposes under the Ohio Revised Code. Finally, the State of Ohio later found that these children were not Petitioner's "dependents" when he had to file for unemployment benefits yet continues to order him to support these "non-dependents." Petitioner herein has argued unsuccessfuly in state courts that this order is prohibited not only by the Fourteenth Amendment to the Constitution of the United States, but also by Article I Section 3 of the Constitution of the State of Ohio. Ohio courts have consistently held that the equal protection provision of Article I of the Ohio Constitution is the same as the guarantees in that respect contained in the Fourteenth Amendment of the

United States Constitution. Ohio case law has found that the limitation placed upon government action by the equal protection clause of Ohio and the United States Constitutions are identical, State ex rel *Strubble* v. *David*, 132 OS 555 (1937) and *Kinny* v. *Kaiser Aluminum and Chemical Corporation*, 41 OS 2d 120 (1975).

The Petitioner strongly urges there is no logical reason to distinguish between the class of non-custodial parents who became situated in those circumstances prior to 1974 and those who found themselves situated after 1974. In effect, the orders of the state court have made a second class citizen out of Henry Griffith and those similarly situated. It is acknowledged that the Constitution does not exclude class legislation, provided there is a reasonable basis for the classification, but it must equally be acknowledged that statutes must operate equally upon all persons of the same class and no discrimination or favoritism among members of the same class is permitted. In this particular case the class of non-custodial parents has been further subdivided with one group being granted all the rights, privileges and immunities of a non-custodial parent and the class within which the Petitioner finds himself situated having none of those rights, privileges and immunities. It is the underlying principal of all decisions which uphold statutes creating reasonable classification, that the principal of equality is fulfilled if equality is observed between the members of a class and it is violated if such equality is not observed, *State ex rel Williams* v. *Glandor*, 148 OS 188 (1947) cert. den. 332 U.S. 817; *Allied Stores of Ohio, Inc.* v. *Bowers*, 358 U.S. 522 (1959).

The prohibitions of the Fourteenth Amendment extend to all actions of the State denying equal protection of the laws, irrespective of whatever agency of the state is taking

the action, or whatever the guise within which it is taken, *Cooper* v. *Aaron*, 358 U.S. 1 (1958).

It is therefore submitted that while the State of Ohio may close its eyes, that equal protection guarantees of its own Constitution and the Constitution of the United States, that the action of the state court herein violates the basic principals of the equality and fairness upon which state governments are to act. To permit such a situation to continue is repugnant to the Fourteenth Amendment to the Constitution of the United States and this Court is required to reaffirm the existing principals of equal protection of the laws and to define the extent to which the State of Ohio can go in limiting such protection.

CONCLUSION

For the reasons set forth above, certiorari should be granted.

Respectfully submitted,

WALTER KENNETH ZUK
1085½ Ohio Pike
Suite Four
Cincinnati, Ohio 45245
(513) 752-1300

Attorney for Petitioner

Appendix

APPENDIX A

THE SUPREME COURT OF OHIO

THE STATE OF OHIO,	)	1982 TERM
	)	To wit:
City of Columbus.	)	January 13, 1982

No. 81-1838

EVELYN R. CLAWSON,
aka EVELYN R. GRIFFITH,

Appellee,

vs.

HENRY L. GRIFFITH,

Appellant.

MOTION FOR AN ORDER DIRECTING THE COURT OF APPEALS

for Clermont County

TO CERTIFY ITS RECORD

It is ordered by the Court that this motion is overruled.

APPENDIX B

THE SUPREME COURT OF OHIO

THE STATE OF OHIO,) 1982 TERM
) To wit:
City of Columbus.) January 13, 1982

No. 81-1838

EVELYN R. CLAWSON,
aka EVELYN R. GRIFFITH,

Appellee,

vs.

HENRY L. GRIFFITH,

Appellant.

APPEAL FROM THE COURT OF APPEALS

for Clermont County

This cause, here on appeal as of right from the Court of Appeals for Clermont County, was heard in the manner prescribed by law, and no motion to dismiss such appeal having been filed, the Court sua sponte dismissed the appeal for the reason that no substantial constitutional question exists herein.

APPENDIX C

Copy of Opinion of The Court of Appeals
Entered October 14, 1981

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLERMONT COUNTY, OHIO

Case No. CA-960

EVELYN R. CLAWSON,
f/k/a EVELYN R. GRIFFITH,

Plaintiff-Appellee,

vs.

HENRY L. GRIFFITH,

Defendant-Appellant.

MEMORANDUM DECISION AND

JUDGMENT ENTRY

(Filed October 14, 1981)

Carol Hake, 120 North Market Street, Batavia, Ohio 45103, for Plaintiff-Appellee,

W. Kenneth Zuk, 1085½ Ohio Pike, Suite Four, Cincinnati, Ohio 45245, for Defendant-Appellant.

PER CURIAM

This cause came on to be heard upon the appeal, the

transcript of the docket, journal entries and original papers from the Court of Common Pleas, Division of Domestic Relations, of Clermont County, Ohio, the briefs and the arguments of counsel.

Now, therefore, the assignments of error having been fully considered, are accordingly passed upon in conformity with App. R. 12 (A) as follows:

Appellant and appellee were divorced by decree dated May 29, 1973. The decree included an order for appellee to have custody of the minor children of the parties and for appellant to pay child support in the amount of $22.50 per week for each child. By entry dated November 15, 1974, the decree was modified to increase support for the three remaining minor children to $25.00 per week for each child. On July 25, 1979, appellee filed a motion to increase support for the two children who were then still living with appellee. The trial court granted the motion and ordered an increase in support to $37.50 per week for each child by entry dated February 19, 1980. From that order appellant brings a timely appeal to this Court.

Appellant's first assignment of error reads:

> The trial court erred to the prejudice of the appellant in granting appellee's motion for continued support of an emancipated child of the parties.

Appellant bases his argument upon the fact that one of the minor children of the parties to whom the modified support order applies attained the age of eighteen on September 8, 1979, which is now the age of majority by virtue of R.C. 3109.01. Appellant concludes that the divorce decree should be interpreted so as not to require him to pay support for the child who is over eighteen. The decree reads, in pertinent part, as follows:

> Said support payments are to be made until such time as the minor children are 21 years of age or are otherwise emancipated as provided by law.

This Court is bound by *Nokes* v. *Nokes* (1976), 47 Ohio St. 2d 1, 351 N.E.2d 174, which held that R.C. 3109.01 is to be applied prospectively and does not affect support obligations in divorce decrees entered prior to the enactment of R.C. 3109.01. Since the decree in the case *sub judice* was entered prior to the enactment of R.C. 3109.01 it must be interpreted so as to provide for support of the children until age 21. There is no argument made that the child is emancipated by any other provision of law. The assignment of error is overruled.

Appellant's second assignment of error reads:

> The trial court erred to the prejudice of the defendant in granting plaintiff's motion for increased support for the children of the parties.

After a careful review of the record we conclude that the trial court did not abuse its discretion in increasing appellant's child support obligation for the two remaining children of the parties. The assignment of error is without merit and is overruled.

All assignments of error properly before this Court having been ruled upon as heretofore set forth, it is the Order of this Court that the judgment or final order herein appealed from be, and the same hereby is, affirmed.

It is further Ordered that a mandate be sent to the Court of Common Pleas of Clermont County, Ohio, for execution upon this judgment.

Costs to be taxed in compliance with Rule 24, Appellate Rules.

And the Court being of the opinion that there were reasonable grounds for this appeal, allows no penalty.

It is further Ordered that a certified copy of this Memorandum Decision and Judgment shall constitute the mandate pursuant to App. R. 27.

To all of which the appellant, by his counsel, excepts.

CASTLE, P.J., HENDRICKSON and KOEHLER, JJ.

APPENDIX D

ASSIGNMENT OF ERROR IN COURT OF APPEALS

FIRST ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED TO THE PREJUDICE OF THE APPELLANT IN GRANTING APPELLEE'S MOTION FOR CONTINUED SUPPORT FOR AN EMANCIPATED CHILD OF THE PARTIES.

Issue Presented for Review and Argument

An order granting continued support for the child of the parties to a pre-1974 divorce violates the equal protection clauses of the Ohio Constitution and the Fourteenth Amendment to the United States Constitution.

SECOND ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED TO THE PREJUDICE OF THE DEFENDANT IN GRANTING PLAINTIFF'S MOTION FOR INCREASED SUPPORT FOR THE CHILDREN OF THE PARTIES.

Issue Presented for Review and Argument

Where a party to a divorce who is ordered to pay child support has an increase in net income of seven and four-tenths (7-4/10) percent over a six (6) year period of time, it is unreasonable, arbitrary and capricious and against the weight of the evidence to increase the support by fifty (50%) percent.

APPENDIX E

Judgment Entry of Trial Court Entered February 18, 1980.

COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

Case No. 72-CI-1083

EVELYN R. GRIFFITH (Now CLAWSON),

Plaintiff,

vs.

HENRY L. GRIFFITH,

Defendant.

ENTRY

This cause came on for hearing on Defendant's Objections to the Referee's Report, said report having been filed with the Clerk of Courts October 1, 1979.

The Court finds that it's approval of the report, dated September 14, 1979 was premature and hereby sets aside said approval.

The Court finds that the law of Ohio, as enunciated in *Rosenfield* v. *Rosenfield,* 47 Ohio State 2nd 12 and *Nokes* v. *Nokes,* 47 Ohio State 2nd 1, on the facts of this case dictate the conclusion reached.

The Court holds that *Rosenfield* and *Nokes* indicate the provisions of § 3109.01 of The Ohio Revised Code are to

be applied prospectively, not retroactively. The Court interprets those decisions to apply to the language of the Decree in force and effect on May, 1973, when the original Decree was entered. Thus, "said support payments are to be made until such time as the minor children are twenty-one (21) years of age or are otherwise emancipated as provided by law" refers to laws in effect in Ohio in 1973, not those enacted at a later date.

The Court further finds that an emancipation order entered by the Court on September 6, 1979, was prematurely and improperly filed by the Court, as disclosed by the circumstances in this case, including the pendency of the Motion filed July 25, 1979. The order of September 6, 1979, is hereby set aside and voided.

The Court finds that the increase in child support, as ordered by the Referee, is justified and within the limits of discretion, based on the evidence. The evidence shows that although the order recommended was on a lesser number of children and maintained the same total amount, the increase in cost of maintaining children and the Defendant's increased income, makes said increase reasonable. The Court concurs that the Defendant's obligation for support of his minor children, as set forth in Plaintiff's memoranda, has in fact decreased from twenty-five percent (25%) of his gross income in 1973 to approximately thirteen percent (13%) of his gross income in 1979.

WHEREFORE, the Court finds the Objections to the Referee's Report not to be well taken. The report is therefore adopted as filed with the additional orders that emancipation order of September 6, 1979 be, and is hereby, set aside.

The obligation for support of the child, Tina, and the

minor child, Lisa, from September 6, 1979 until September 20, 1979, shall be at the rate in force prior to the Referee's Report and that support payments at the rate of thirty seven dollars fifty cents ($37.50) per child, shall be charged for both children effective with the payments due September 24, 1979 and thereafter, subject to further order of the Court. To all of which Defendant excepts.

.....

Judge

Have Seen:

/s/ CAROL HAKE
Attorney for Plaintiff
120 N. Market Street
Batavia, Ohio 45103
732-1072

/s/ KENNETH ZUK
1085 ½ Ohio Pike
Cincinnati, Ohio 45245
752-1300

APPENDIX F

Copy of §§ 1.85, 3103.03 and 3109.01 Revised Code of Ohio; Constitution of the State of Ohio; Fourteenth Amendment to the Constitution of The United States

§ 1.58 Effect of re-enactment, amendment, or repeal.

(A) The re-enactment, amendment, or repeal or a statute does not, except as provided in division (B) of this section:

(1) Affect the prior operation of the statute or any prior action taken thereunder;

(2) Affect any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred thereunder;

(3) Affect any violation thereof or penalty, forfeiture, or punishment incurred in respect thereto, prior to the amendment or repeal;

(4) Affect any investigation, proceeding, or remedy in respect of any such privilege, obligation, liability, penalty, forfeiture, or punishment; and the investigation, proceeding, or remedy may be instituted, continued, or enforced, and the penalty, forfeiture, or punishment imposed, as if the statute had not been repealed or amended.

(B) If the penalty, forfeiture, or punishment of any offense is reduced by a re-enactment or amendment of a statute, the penalty, forfeiture, or punishment, if not already imposed, shall be imposed according to the statute as amended.

§ 3103.03 Duty of husband to support family.

The husband must support himself, his wife, and his minor children out of his property or by his labor. If he is unable to do so, the wife must assist him so far as she is able.

Notwithstanding section 3109.01 of the Revised Code, the parental duty of support to children shall continue so long as the child continuously attends on a full-time basis any recognized and accredited high school, even when such child has attained the age of majority. Such duty of support shall continue during seasonal vacation periods. If he neglects to support his wife, any other person, in good faith, may supply her with necessaries for her support, and recover the reasonable value thereof from the husband unless she abandons him without cause.

§ 3109.01 Age of majority.

All persons of the age of eighteen years or more who are under no legal disability, are capable of contracting and are of full age for all purposes.

CONSTITUTION OF THE STATE OF OHIO

Article I, Section 2

§ 2 Right to alter, reform, or abolish government, and repeal special privileges.

All policitical power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may

not be altered, revoked, or repealed by the general assembly.

FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Opposition

Supreme Court, U.S.
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Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS, TWELFTH APPELLATE DISTRICT, CLERMONT COUNTY, OHIO

CAROL C. HAKE
(Counsel of Record)
BARBEAU, CARROLL & HAKE
120 N. Market Street
Batavia, Ohio 45103
(513) 732-1072

Attorney for Respondent

COURT INDEX PRESS, INC. — 215 E. Ninth Street, Cincinnati, Ohio 45202 — (513) 241-1450

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Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS, TWELFTH APPELLATE DISTRICT, CLERMONT COUNTY, OHIO

Respondent prays that a Writ of Certiorari be denied to review judgment of the Court of Appeals, Twelfth Appellate District, Clermont County, Ohio entered on October 14, 1981 and that said judgment be permitted to stand by order of the Ohio Supreme Court under date of January 13, 1982.

JURISDICTION

On October 14, 1981, the Twelfth District Court of Appeals, Clermont County, Ohio affirmed the judgment of the Clermont County Court of Common Pleas entered of record February 18, 1980. The Ohio Supreme Court dismissed Petitioner's Motion to Certify on January 13, 1982.

The order of the Ohio Supreme Court does not violate the Fourteenth Amendment of the United States Constitution nor is there a substantial constitutional issue that needs to be addressed by this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent provisions of the Constitution of the State of Ohio, Article I, Section 2, Constitution of the State of Ohio, Article II, Section 28, Ohio Revised Code, Section 1.58 and Ohio Revised Code, Section 3109.01 are set forth in Appendix A herein.

STATEMENT OF THE CASE

On July 25, 1979, Respondent, Evelyn R. Clawson, f/k/a Evelyn R. Griffith, filed a post divorce decree motion to increase support for two unemancipated children of the parties.

One of the children, Tina Griffith, had attained the age of eighteen on December 8, 1979.

Appellant sought application of Ohio Revised Code, Section 3109.01 which reduced the age of majority in Ohio from twenty-one years to eighteen years, effective September 1, 1974.

Respondent relied on a prior Ohio Supreme Court decision which dictated prospective application of Section 3109.01 of the Ohio Revised Code. The Ohio Supreme Court asserted that a finding otherwise would be "tantamount to a ruling that (Ohio Revised Code, Section 3109.-01) applies retroactively and, therefore, in violation of Article II, Section 28 of the Ohio Constitution."

The Ohio Supreme Court did not addess the issue of Equal Protection.

REASON FOR DENYING WRIT

The area of concern in Petitioner's Application is support of children who reside within the boundaries of the State of Ohio.

If this case involves a constitutional issue, the constitutional issue should be addressed to the Equal Protection provision of the Ohio Constitution. Whether a state statute has been duly enacted should raise no Federal question vesting jurisdiction with the Supreme Court of the United States.

ARGUMENT

WHETHER AN ORDER BY A STATE COURT MAKING PROSPECTIVE APPLICATION OF A NEWLY ENACTED STATE STATUTE VIOLATES THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

Contrary to Petitioner's statement, the unconstitutionality of the continuing order for support was not presented at the State Trial Court level, but was first asserted at the Ohio Twelfth District Court of Appeals.

Petitioner refers to the Ohio Supreme Court's prospective application of Ohio Revised Code, Section 3109.01, as being in violation of the Fourteenth Amendment of the Constitution of the United States.

Clearly *Nokes* v. *Nokes,* 47 Ohio St. 2d 1 (July 7, 1976) pre-empted and consolidated prior Ohio decisions concerning conflicting verbiage in separation agreements and court orders relating to payment of child support *vis-à-vis* Ohio Revised Code, Section 3109.01.

Prior to the *Nokes* case, obligations to support were often imposed according to an arbitrary language in divorce decrees.

In an attempt to establish unanimity, the Ohio Supreme Court propounded the *Nokes* decision.

The Ohio Supreme Court was bound by the provision in Ohio Revised Code, Section 1.58 which indicates the Ohio legislative intent to establish a general savings clause applicable to situations such as reduction in the age of majority (Ohio Revised Code, Section 3109.01).

Under Ohio Revised Code, Section 1.58 (A) (1), reducing the age of majority does "not affect" the decretal pro-

visions for supporting a child until age twenty-one, which were "actions" of the Court made under an earlier version of Ohio Revised Code, Section 3109.01.

Nor may the "obligation" to provide such support, previously "incurred" under the prior Ohio Revised Code, Section 3109.01, be later changed solely by virtue of the amendment.

Respondent asserts that the Ohio General Assembly clearly could have applied the statute retroactively. In not doing so, the provisions of Ohio Revised Code, Section 1.58 (A) (1) and (2) mandatorily require prospective application only.

Petitioner further asserts that *Nokes* v. *Nokes* creates a class of non-custodial parents who are denied equal protection by virtue of being forced to support children beyond the age required by custodial parents.

Respondent asserts that the Ohio Supreme Court fully appreciated the difficulty in altering the support concepts as drastically as did *Nokes* v. *Nokes*. Had *Nokes* been applied retroactively, however, the Ohio Supreme Court would have created another class of parents not afforded "equal protection", that is, a class of custodial parents who would be required to re-imburse the non-custodial payor after support was received.

In applying Ohio Revised Code, Section 3109.01, retroactively and in addressing the Ohio Constitutional issue of retroactivity, the Ohio Supreme Court properly applied the statute to Article II, Section 28 of the Ohio Constitution. To do otherwise would have been a clear violation of Ohio's Constitutional provisions.

Respondent therefore submits that *Nokes* v. *Nokes*, as affirmed by the Ohio Supreme Court, is not in violation

of the Equal Protection Provision of the Constitution of the United States and in fact clearly follows the constitutional guarantees set forth in the Ohio Constitution and the Constitution of the United States.

CONCLUSION

For reasons set forth above, Petitioner's Writ of Certiorari should be denied.

Respectfully submited,

CAROL C. HAKE
BARBEAU, CARROLL & HAKE

120 N. Market Street
Batavia, Ohio 45103
(513) 732-1072

Attorney for Respondent

Appendix

APPENDIX A

Copy of §§ 1.58 and 3109.01, Ohio Revised Code; Constitution of the State of Ohio, Article I, Section 2; Constitution of the State of Ohio, Article II, Section 28

OHIO REVISED CODE

§ 1.58 Effect of re-enactment, amendment, or repeal.

(A) The re-enactment, amendment, or repeal of a statute does not, except as provided in division (B) of this section:

(1) Affect the prior operation of the statute or any prior action taken thereunder;

(2) Affect any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred thereunder;

(3) Affect and violation thereof or penalty, forefeiture, or punishment incurred in respect thereto, prior to the amendment or repeal;

(4) Affect any investigation, proceeding, or remedy in respect of any such privilege, obligation, liability, penalty, forfeiture, or punishment; and the investigation, proceeding, or remedy may be instituted, continued, or enforced, and the penalty, forfeiture, or punishment imposed, as if the statute had not been repealed or amended.

(B) If the penalty, forfeiture, or punishment of any offense is reduced by a re-enactment or amendment of a

statute, the penalty, forfeiture, or punishment, if not already imposed, shall be imposed according to the statute as amended.

§ 3109.01 Age of majority.

All persons of the age of eighteen years or more who are under no legal disability, are capable of contracting and are of full age for all purposes.

CONSTITUTION OF THE STATE OF OHIO

Article I, Section 2

§ 2 Right to alter, reform, or abolish government, and repeal special privileges.

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly.

Article II, Section 28

§ 28 Retroactive laws.

The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts; but may, by general laws, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the laws of this state.